IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 17076 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HEMALKUMAR JAWAHARBHAI KASHYAP THRO.HIS WIFE DIMPLE H KASHYAP

Versus

COMMISSIOENR OF POLICE SURAT

Appearance:

1. Special Civil Application No. 17076 of 2003

MR ASHISH D OZA for Petitioner No. 1

MS MITA S PANCHAL AGP for Respondent No. 1,3

RULE SERVED for Respondent No. 1,2-3

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 26/04/2004

ORAL JUDGEMENT

The petitioner above named has preferred this

petition under Article 226 of the Constitution of India for appropriate writ, order or direction, for quashing and setting aside an order of detention dated 20/10/03 passed by respondent no.1 herein, in exercise of the powers u/s.3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short, "the said Act").

2. It was alleged against the petitioner that one prohibition offence was registered against him before Umara Police Station at C.R.No.658 / 2003 on 29/08/03 for offences punishable u/s.3, 4 & 5 of The Immoral Traffick (Prevention) Act, 1956. It was also alleged against the petitioner that two witnesses had given statements against him.

3. On the strength of the aforesaid one registered offence and two statements of unnamed witnesses, the detaining authority found the petitioner to be a "bootlegger" and accordingly, the impugned order of detention was passed against the petitioner. Feeling aggrieved by the said order of his detention, the petitioner has preferred this petition before this Court.

4. On receipt of the petition, Rule was issued and in response to the service of notice of Rule, Ms.Mita S Panchal learned AGP has appeared on behalf of the respondents. I have heard the learned advocates for the parties and have perused the papers.

5. During the course of hearing, the learned advocate for the petitioner states that the present petitioner and the petitioner in S.C.A.No.3155/2004 were co-detenus and that they were involved in the same offence i.e. Umara Police Station C.R.No.658/2003 dated 29/08/03. That even the statements of two unnamed witnesses refer to the alleged activities of the petitioner as well as of the said co-detenu. That, therefore, the case of the present petitioner is on par with the case of the petitioner in the aforesaid S.C.A. which has been disposed of on 21/04/04.

6. The learned advocate for the petitioner, therefore states that when the aforesaid S.C.A. has been allowed and the impugned order of detention has been quashed and set aside, then on the principle of parity, this petition may also be allowed and the petitioner may also be set at liberty.

7. On hearing the learned AGP, it is clear that the facts in both the matters are identical and that the present petitioner and the petitioner in the aforesaid

S.C.A. are co-detenus and co-accused. Even the statements of the witnesses are common against both the petitioners. Therefore, on the principle of parity, the present petition is also required to be allowed.

8. For the foregoing reason, this petition is allowed. The impugned order of detention dated 20/10/03 passed by respondent no.1 against the petitioner, is ordered to be quashed and set aside. Detenu, Hemalkumar Jawaharbhai Kashyap, is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute with no order as to costs. Direct service permitted.

(D. P. Buch, J.)
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